IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1359 OF 2006.

Mrs.Chitra Nitin Parange. ... Petitioner.

V/s.

Nitin Rambhau Parange. ... Respondents.

U.P.Warunjikar for the petitioner.

S.A.Rajeshirke for the respondent.

CORAM: V.C.DAGA, J.

DATED: 30th August 2006.

JUDGMENT :

. Rule, returnable forthwith.

. Shri Rajeshirke waives service for the respondent.

. By consent of parties petition is taken up for final hearing and disposal.

Facts :

2. This petition; filed under Article 227 of the Constitution of India, is directed against the order dated 21st January, 2006 passed below Exh.21 in H.M.P.No.40/2000 by the Civil Judge, Senior Division, Panvel, whereby the written statement filed by the petitioner-wife is taken on record,

at the cost of the order; declaring thereunder that the wife shall not be entitled to claim maintenance from the date of her appearance till the date of filing written statement. In other words, wife is deprived of her right to claim maintenance for a period of 63 months @ Rs.1,500/- per month; amounting to almost more than Rs.90,000/-.

Submissions :

3. The learned counsel appearing for the petitioner submits that there was no justification for the trial Court to take away the right of the petitioner-wife to claim maintenance already awarded by the Court under order dated 15th September, 2003; while allowing application at Exh.10 filed by the petitioner-wife in the matrimonial proceedings. He further submits that the order dated 15th September, 2003 having become final and conclusive for want of further challenge in the higher forum/court operated as *res judicata* between the parties even during the pendency of the proceedings. In that view of the matter, he submits that the last part of the impugned order to the extent it directs that the petitioner-wife shall not be entitled to claim the maintenance for the stipulated period is liable to be quashed and

set aside.

4. Per contra, learned counsel appearing for the respondent-husband submits that no explanation was offered by the petitioner-wife for delayed filing of the written statement. He submits that the trial Court was perfectly justified in passing the impugned order while taking written statement on record. He, thus, submits that the impugned order deserves to be maintained and no interference at hands of this Court is called for in exercise of writ jurisdiction.

Consideration :

5. Having heard rival parties, it is not in dispute that the maintenance was awarded by the Court below vide its order dated 15th September, 2003. It is also not in dispute that the said order, for want of further challenge in the higher forum or court became final and conclusive and operated as *res judicata* between the parties during the pendency of the original matrimonial proceedings.

6. During the course of hearing, it transpired that the respondent-husband did not pay a single pie towards maintenance to the wife and son pursuant to the order dated 15th September, 2003. In the wake of this undisputed fact, one can imagine the plight of the wife left with no financial assistance to fight litigation initiated by the husband. One can very well imagine how miserable would be the life of the wife without any maintenance. This Court can take judicial notice of the fact that for want of funds, the petitioner- wife could not have filed her written statement for want of payment to her lawyer/ advocate. With the result, after mobilisation of some funds from some other sources; if she has filed her written statement, in that event it was perfectly open to the trial Court to take written statement on record without putting impugned onerous condition sought to be put in the order impugned in this petition.

7. The impugned order to the extent it is challenged is operating harshly and has an effect of depriving a wife of her right to claim maintenance, practically, for a period of five

years at the rate of Rs.1,500/- per month. Had the Court desired to impose heave costs, even then the amount of costs would not have been in the region of Rs.90,000/-. In this view of the matter, the impugned order to the extent it puts onerous condition is liable to be quashed and set aside.

8. In the result, impugned order dated 21st January, 2006 to the extent it directs that the petitioner-wife shall not be entitled to claim maintenance from the date of her appearance till the date of the order is quashed and set aside. Rest of the order is maintained as it is.

9. Mere disposal of this petition in the above manner will not do justice between the parties. Some directions with regard to payment of the arrears of maintenance is necessary. The respondent-husband has not paid maintenance right from the date it was awarded vide order dated 15th September, 2003. The amount of maintenance was to be paid from the date of application. On being asked, learned counsel for the respondent- husband prayed for grant of monthly instalments sufficient

time to pay arrears of maintenance. Prayer made cannot be granted. However, considering the arrears of maintenance and the liability arising therefrom, respondent- husband is granted three months time to pay entire amount of arrears of maintenance in the trial Court, subject to the condition that henceforth the amount of monthly maintenance shall be paid by the husband by making deposit in the trial Court on or before 10th of each month. First of such deposit shall be made on or before 10th of October, 2006. It is further made clear that failure on the part of respondent-husband to pay entire amount of arrears of maintenance till 31st August, 2006 within the stipulated period of three months, the said amount of arrears shall carry interest @ 6% per annum till full and final payment thereof.

10. Petition stands disposed of. Rule is made absolute in terms of this order. No order as to costs.

(V.C.DAGA, J.)